

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS** 2012 OCT 18 AM 11:43
(Ft. Worth Division) CLERK OF COURT

MAYFORD K. DAVIS, JR., individually)
and as a private attorney general on behalf)
of others similarly situated;)
Plaintiff)

4-12CV-740-A
CASE NO. _____

v.)

JUDGE _____

JOHN SCHWAB, PRESIDENT, NCO)
FINANCIAL SYSTEMS, INC., INOVISION-MEDCLR)
PORTFOLIO GROUP, LLC.,)
Defendants)

TRIAL BY JURY DEMANDED

**ORIGINAL COMPLAINT FOR VIOLATIONS OF
FCRA, 15 U.S.C. § 1681 and FDCPA, 15 U.S.C. § 1692**

Plaintiff, MAYFORD K. DAVIS, JR., individually and as a private attorney general on
behalf of others similarly situated hereby brings this lawsuit against Defendants, JOHN
SCHWAB, PRESIDENT, NCO FINANCIAL SYSTEMS, INC., INOVISION-MEDCLR
PORTFOLIO GROUP, LLC.

JURISDICTION AND VENUE

1. The jurisdiction of the Court is conferred by 15 U.S.C. § 1681p, 15 U.S.C. § 1692k(d),
and 28 U.S.C. § 1331.
2. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391.
3. Venue is proper in the UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS (Ft. Worth Division).
4. This is an action for damages which is less than \$25,000.
5. This complaint is brought within the statute of limitations as set forth in the FDCPA 15
U.S.C. § 1692k(d) and the FCRA 15 U.S.C. § 1681p(1) and (2).

1 13. A consumer report is a communication of information as defined within the FCRA, 15
2 U.S.C. § 1681a(d).

3 14. The term "Communication" means the conveying of information regarding a debt
4 directly or indirectly to a person through any medium as stated within the FDCA, 15
5 U.S.C. § 1692a(2).

6
7 15. The FCRA defines the permissible purpose for which a person may obtain a consumer
8 credit report at 15 U.S.C. § 1681b.

9 16. EQUIFAX is a credit reporting agency within the definition of the FCRA, 15 U.S.C. §
10 1681a(f).

11
12 17. As defined by 15 U.S.C. § 1681b permissible purposes are generally as if the consumer
13 makes application for credit, if the consumer makes application for employment, if the
14 consumer makes application for insurance which would require underwriting, or if the
15 consumer is offered a bona fide offer of credit as a result of the inquiry and none of
16 these situations occurred and there is no evidence to the contrary.

17
18 18. Plaintiff has never had any business dealings or "account"s, as defined by 15 U.S.C. §
19 1683a(2), with, made application for credit from, made application for employment
20 with, applied for insurance with, or received a bona fide offer of credit from said
21 Defendants and there is no evidence to the contrary.

22
23 19. Upon belief and information, Plaintiff contends that these practices are widespread
24 across the country. Therefore, Plaintiff is suing as a private attorney general on behalf
25 of all others similarly situated. Plaintiff intends to propound discovery to said
26 Defendants identifying these other individuals who have suffered similar violations of
27 the FCRA and the FDCPA. Plaintiff intends to seek attorney's fees from said
28

1 Defendants, JOHN SCHWAB, NCO FINANCIAL SYSTEMS, INC., INOVISION-
2 MEDCLR PORTFOLIO GROUP, LLC., as a private attorney general. (The “private
3 attorney general” concept holds that a successful private party plaintiff is entitled to
4 recovery of his legal expenses, including attorney fees, if he has advanced the policy
5 inherent in public interest legislation on behalf of a significant class of persons. Dasher
6 v. Housing Authority of City of Atlanta, GA, D.C.Ga., 64 F.R.D. 720, 722; Graziano v.
7 Harrison 950 F.2d 107; deJesus v. Banco Popular de Puerto Rico, 918 F.2d 232, 235
8 (1st Cir. 1990); Pipiles v. Credit Bureau of Lockport, 886 F.2d 22, 28 (2d Cir. 1989);
9 Emanuel v. American Credit Exchange, 870 F.2d 805, 809 (2d Cir. 1989); See also
10 Equal Access to Justice Act.)

11 FACTUAL ALLEGATIONS

- 12
- 13
- 14 20. On or about **May 17, 2011** Plaintiff obtained his consumer credit report from the credit
15 reporting agencies Equifax, TransUnion, and Experian. Plaintiff found an entry on the
16 Equifax report connected to said Defendants that was unknown and/or not authorized
17 by the Plaintiff.
- 18
- 19 21. Plaintiff discovered after examining the consumer credit reports that the Defendants,
20 SCHWAB, et al had obtained his consumer credit report during the month of **April**
21 **2009**.
- 22
- 23 22. On or about **July 24, 2012** Plaintiff mailed to the Defendants a certified letter (# 7010
24 1670 0002 5084 7789) regarding Intent To Sue. This letter was an attempt to
25 honorably settle this matter and to mitigate the damages to the Defendant. The USPS
26 records indicate that the letter was delivered to the Defendants at 8:31 am on July 27,
27 2012.
- 28

1 23. On or about **August 7, 2012** Plaintiff received a letter from a Dawn M. Rhodenbaugh,
2 Consumer Affairs Representative III, on behalf of John Schwab indicating “the above
3 referenced account is closed in our office.” The **egregious violation of Plaintiff’s**
4 **privacy** had already occurred.

5
6 24. On or about **August 8, 2012** Plaintiff mailed to said Defendants a certified letter
7 (# 7010 1670 0002 5084 7895) regarding Notice of Pending Lawsuit. This second
8 letter was an attempt to allow the Defendants an opportunity to honorably settle this
9 **egregious violation of Plaintiff’s right to privacy** and to mitigate the damages and
10 costs.

11
12 **COUNT 1**
13 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**
14 **(FDCPA) 15 U.S.C. § 1692**

15 25. Paragraphs 1 through 24 are realleged as though herein set forth.

16 26. Defendants obtained Plaintiff’s consumer credit report under false and misleading
17 representations violating the FDCPA, 15 U.S.C. §§ 1692e and 1692e(2).

18 27. Defendants used deceptive means in an attempt to collect an alleged debt by obtaining
19 Plaintiff’s consumer credit report violating the FDCPA § 1692e(10).

20 28. Defendants utilized Unfair Practices in the attempt to collect an alleged debt therefore
21 violating the FDCPA § 1692 f.

22 29. Defendants failed to adequately validate the alleged debt violating the FDCPA, §
23 1692g.

24
25 30. **WHEREFORE**, Plaintiff demands judgment for statutory damages of **\$1,000** from
26 each Defendant under the FDCPA, 15 U.S.C. § 1692a(2)(A).

27 **COUNT II**
28 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**

(FCRA) 15 U.S.C. § 1681n

31. Paragraphs 1 through 24 are realleged as though set forth herein.

32. Defendants, JOHN SCHWAB, NCO FINANCIAL SYSTEMS, INC., INOVISION-MEDCLR PORTFOLIO GROUP, LLC., willfully failed to comply with the FCRA at 15 U.S.C. § 1681n by obtaining Plaintiff's consumer credit report from Equifax without permissible purpose as set forth in 15 U.S.C. § 1681b(f).

33. Plaintiff has reviewed all of **the limited and specific circumstances** that would grant said Defendants permissible purpose to obtain Plaintiff's consumer credit report under 15 U.S.C. § 1681b and **none** applied to the Defendants which is an egregious violation of Plaintiff's right to privacy.

34. At no time have Defendants ever indicated what justification they may have had for obtaining Plaintiff's consumer credit report. The Defendants had a duty to properly ascertain if there was any legitimate permissible purpose prior to obtaining Plaintiff's consumer credit report and the Defendant breached said duty by failing to do so. There does not exist an account with the Defendant that provides them a right to collect to have a permissible purpose to obtain Plaintiff's consumer credit report and therefore Plaintiff is entitled to statutory damages for **BREACH OF SAID DUTY**.

35. **WHEREFORE**, Plaintiff demands judgment for statutory damages of **\$1,000** for each violation against each Defendant pursuant to 15 U.S.C. § 1681n, attorney's fees of \$3,000 (see ¶ 19), **costs**, punitive damages, and other such relief determined by the Honorable Court.

COUNT III
VIOLATIONN OF THE FCRA 15 U.S.C. § 1681o

36. Paragraphs 1 through 24 are hereby realleged as though set forth herein.

37. Defendants, JOHN SCHWAB, NCO FINANCIAL SYSTEMS, INC., INOVISION-MEDCLR PORTFOLIO GROUP, LLC., negligently failed to comply with the FCRA § 1681o by obtaining Plaintiff's consumer credit report without permissible purpose as set forth in 15 U.S.C. § 1681b(f).

38. Plaintiff has never given said Defendants consent, implied or otherwise, to acquire Plaintiff's consumer credit report from any credit reporting agency.

39. Plaintiff has submitted several communications (See ¶¶ 22-24) to Defendants indicating an "Intent to Sue" and "Pending Lawsuit" as a good faith effort to reach a settlement for the violations in obtaining Plaintiff's consumer credit report prior to filing a civil lawsuit against Defendants. The Defendants counsel replied via an email and stated that because the alleged debt was of a medical nature that gave them a permissible purpose for illegally obtaining the consumer credit report of the Plaintiff. Plaintiff does not owe Defendant's any money for any alleged debt.

40. The actions of the Defendants obtaining the Plaintiff's consumer credit report with no permissible purpose or the specific consent of the Plaintiff is a negligent violation of the FCRA, 15 U.S.C. 1681 b and is an **egregious violation of Plaintiff's right to privacy**. The Plaintiff is entitled judgment in his favor for costs and fees for the violations stated.

41. **WHEREFORE**, Plaintiff demands judgment for each violation against each Defendant pursuant to 15 U.S.C. § 1681o, attorney's fees of **\$3,000** (see ¶ 19), **costs**, and other such relief as determined by the Honorable Court.

COUNT IV

VIOLATION OF FAIR CREDIT REPORTING ACT (FCRA), 15 U.S.C. §1681 WILLFUL NON-COMPLIANCE BY SAID DEFENDANTS

1 42. Paragraphs 1 through 24 are realleged as though fully set forth herein.

2
3 43. Plaintiff, MAYFORD K. DAVIS, JR., is a consumer within the meaning of the Fair
4 Credit Reporting Act, 15 U.S.C. § 1681a(c).

5 44. Defendants, SCHWAB ET AL, are furnishers of information within the meaning of the
6 FCRA, 15 U.S.C. §1681s-2.

7 45. Equifax is a credit reporting agency within the definition of the FCRA, 15 U.S.C. §
8 1681a(f).

9 46. Consumer credit report is a consumer report as defined in the FCRA, 15 U.S.C. §
10 1681a(d).

11 47. Defendants violated FCRA, 15 U.S.C. § 1681b(f)(2) as there was no proper
12 certification as required which is an **egregious violation of Plaintiff's right to**
13 **privacy.**

14 48. **WHEREFORE**, Plaintiff demands judgment for damages in the amount of **\$1,000 for**
15 **each violation** against each Defendant, SCHWAB ET AL, for actual or statutory
16 damages, and punitive damages, attorney's fees of **\$3,000** (see ¶ 19), and **costs**,
17 pursuant to 15 U.S.C. § 1681n.

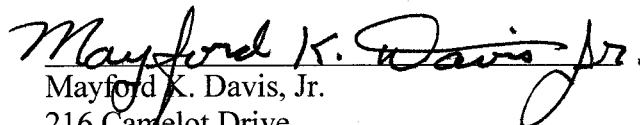
18 **WHEREFORE**, Plaintiff demands judgment against said Defendants, for damages, **statutory**
19 **damages of \$12,000**, punitive damages where applicable, **attorney's fees of \$9,000** (see ¶ 19),
20 **costs**, and other relief as determined by the HONORABLE COURT pursuant to 15 U.C.S. §
21 1681n(a)(3), § 1681o, and § 1692k.

22
23
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25 **DEMAND FOR TRIAL BY JURY**

26 Plaintiff hereby demands a **Trial By Jury** of all triable issues as a matter of law.

27 Respectfully submitted on this 18th day of October, 2012.
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(817) 768-7459
mdcherokee44@gmail.com

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAVIS, MAYFORD K., JR.

(b) County of Residence of First Listed Plaintiff **PARKER**
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

JOHN SCHWAB, PRESIDENT, NCO FINANCIAL SYSTEMS, INC.,
 INOVISION-MEDCLR PORTFOLIO GROUP

County of Residence of First Listed Defendant **MONTGOMERY**
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4-12CV-740-A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

- (Place an "X" in One Box Only)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
FCRA 15 USC 1681 & FDCPA 15 USC 1692

Brief description of cause:

Willfully & Negligently obtaining consumer credit reports/filing false information to credit reporting agencies

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 21,000.00
 CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

PENDING OR CLOSED: (See instructions): JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Oct 18, 2012

Mayford K. Davis Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$ 350.00

APPLYING IFP

JUDGE

MAG. JUDGE